

FCC MAIL SECTION

Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

1998 Biennial Regulatory Review --
Streamlining of Cable Television Services
Part 76 Public File and Notice Requirements

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CS Docket No. 98-132

ORDER ON RECONSIDERATION
AND
FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: May 8, 2000

Released: May 18, 2000

Comment Date: [21 days after Federal Register publication]

Reply Comment Date: [31 days after Federal Register publication]

By the Commission:

I. INTRODUCTION

1. The Commission, on its own motion, commences this *Order on Reconsideration and Further Notice of Proposed Rule Making* ("Reconsideration and Further NPRM") in connection with the 1998 Biennial Regulatory Review -- *Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Report and Order* ("Order")¹ pursuant to Sections 1.411 and 1.421 of the Commission's rules.² In the *Order*, the Commission revised and streamlined the public file and notice requirements set forth in the Commission's Part 76 cable television rules.³ The *Order* reduced the regulatory burden faced by cable operators with regard to public file requirements by: (1) reorganizing the public file requirements into three new subparts of Part 76; (2) providing cable operators with an alternative to maintaining a paper public file; (3) eliminating outdated public file requirements; and (4) expanding the definition of small cable systems for purposes of the public inspection rules.

2. We have discovered that the "Notice of Proposed Rule Making" ("NPRM") in this proceeding inadvertently was not published in the Federal Register. Section 1.412 of the Commission's rules provides that prior notice of proposed rulemaking is ordinarily given by publication of a NPRM in the *Federal Register*.⁴ Section 1.412 (b)(5) of the Commission's rules creates an exception to the prior notice

¹ 14 FCC Rcd 4653 (1999). The *Order* has not yet been published in the Federal Register.

² 47 C.F.R. §§ 1.411 and 1.421.

³ 47 C.F.R. §§ 76.1 - 76.1514 (1997).

⁴ 47 C.F.R. § 1.412

requirement for, among other things, rules involving Commission organization, procedure, or practice.⁵ In this proceeding, the NPRM contained proposed changes in the Commission's public file and notice requirements which were predominately procedural in nature and, thus, pursuant to Section 1.412(b)(5), did not require prior notice by publication in the *Federal Register*. Upon further review, the Commission has determined that one provision that was adopted in the Order contains a substantive rule change and required prior notice. We therefore vacate that portion of the Order for which prior notice was required but not given, and hereby give notice of, and seek comment on, our intent to reinstate the vacated rule.

II. DISCUSSION

3. The *Order* reorganized the Commission's public file, notice, recordkeeping, and reporting requirements that provide consumers with information about the cable services they receive and the rates they pay.⁶ Those requirements were previously found in various sections throughout Part 76 of the Commission's rules. The reorganization created three new subparts in Part 76 -- subparts T, U, V, which contain public notice and file requirements. Subpart T contains notice requirements, subpart U contains recordkeeping requirements, and subpart V contains reporting and filing requirements. The *Order* further created an alternative to paper recordkeeping by permitting cable operators to maintain public information in a computer database, and eliminated regulations which were outdated, e.g., rate freeze regulations. The Commission has determined that those actions were purely procedural in nature and did not alter the substantive public file requirements with which cable operators must comply. Thus, we clarify that such actions fall within the purview of the exception to prior notice found in Section 1.412(b)(5) of the Commission's rules. Accordingly, those actions will become effective thirty (30) days after publication in the Federal Register.

4. The *Order* further adopted an expansion of the definition of small cable systems for purposes of the public inspection rules, which does alter the substantive public file requirements for a certain subset of cable operators. The *Order* redesignated Section 76.305(a) of the Commission's rules as new rule 76.1700(a). Prior to the *Order*, Section 76.305(a) provided an exemption from certain recordkeeping requirements for cable operators with fewer than 1000 subscribers and prescribed recordkeeping requirements for cable operators with 1000 or more subscribers.⁷ In the *Order*, the Commission redesignates the rule, maintains the exemption, and adds a limited exemption for cable operators with 1000 or more subscribers, but fewer than 5000 subscribers. New Section 76.1700(a) provides as follows:

§76.1700 Records to be maintained locally by cable system operators.

(a) *Recordkeeping requirements.* The operator of every cable television system having fewer than 1,000 subscribers is exempt from the public inspection requirements contained in § 76.1701 (political file); §76.1715 (sponsorship identification); §76.1702 (EEO records available for public inspection); §76.1703 (commercial records for children's programming); §76.1704 (proof-of-performance test data); and §76.1706 (signal leakage logs and repair records). The operator of every cable television system having 1000 or more subscribers but fewer than 5000 subscribers shall, upon request, provide the information required by §76.1715 (sponsorship identification); §76.1702 (EEO records available for public inspection); §76.1703 (commercial records for children's

⁵ 47 C.F.R. §1.412(b)(5)

⁶ See *Order*, 14 FCC Rcd 4653, Exhibit C - Final Rule Changes

⁷ 47 C.F.R. § 76.305(a).

programming); §76.1704 (proof-of-performance test data); and §76.1706 (signal leakage logs and repair records) but shall maintain for public inspection a file containing a copy of all records required to be kept by §76.1701 (political file). The operator of every cable television system having 5000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §76.1701 (political file); §76.1715 (sponsorship identification); §76.1702 (EEO records available for public inspection); §76.1703 (commercial records for children's programming); §76.1704 (proof-of-performance test data); and §76.1706 (signal leakage logs and repair records).

5. The Commission finds that new rule 76.1700(a) creates a substantive rule change for cable operators with 1000 or more subscribers, but fewer than 5000 subscribers and, accordingly, the provision is subject to the prior notice requirement contained in Section 1.412 of the Commission's rules. We therefore vacate that portion of the *Order* promulgating Section 76.1700(a), and seek comment on the amendment of Section 76.305(a) of the Commission's rules as indicated in now vacated Section 76.1700(a).

III. INITIAL REGULATORY FLEXIBILITY ANALYSIS

6. As required by Section 603 of the Regulatory Flexibility Act ("RFA"),⁸ the Commission is incorporating an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and proposals in this *Reconsideration and Further NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Commission will send a copy of this *Reconsideration and Further NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the RFA.⁹ In addition, the *Reconsideration and Further NPRM* will be published in the Federal Register.¹⁰

A. Need for, and Objectives of, the Proposed Rules.

7. The Commission adopted 1998 *Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Report and Order* ("Order") pursuant to Section 11 of the 1996 Telecommunications Act which requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest.¹¹ Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presented an excellent opportunity for a thorough examination of all of the Commission's regulations. The initial NPRM in this proceeding was not published in the Federal Register. This *Reconsideration and Further NPRM* finds that, with the exception of one provision, the rules adopted in the *Order* are procedural in nature and subject to the prior notice exemption contained in Section 1.412(b)(5)

⁸⁸ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁹ 5 U.S.C. § 603(a).

¹⁰ *Id.*

¹¹ 47 U.S.C. § 161; FCC News Release (Nov. 18, 1997).

of the Commission's rules.¹² This *Reconsideration and Further NPRM* also vacates that portion of the *Order* which contains a substantive rule change for which prior notice was required but not given and gives notice of, and seeks comment on, our intent to reinstate the vacated rule.

B. Legal Basis.

8. The authority for the action proposed for this rulemaking is contained in Sections 4(i)-(j) and 303 (r) of the Communications Act of 1934, as amended.¹³

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply.

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁴ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.¹⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.¹⁶

10. The *Reconsideration and Further NPRM* contains a proposal which applies to cable operators with 1000 or more subscribers, but fewer than 5000 subscribers. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for rate regulation purposes. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.¹⁷ Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable system operators at the end of 1995.¹⁸ Consequently, we estimate that fewer than 1439 small entity cable system operators may be affected by the decisions and rules we propose.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

11. The *Reconsideration and Further NPRM* will not increase the recordkeeping or information collection requirements for any cable operator. In fact, the proposed revision will decrease certain recordkeeping requirements for cable operators with 1000 or more, but fewer than 5000 subscribers. The proposed rule eliminates the requirement that cable operators with 1000 or more, but less than 5000 subscribers maintain certain records in their public file. The proposed rule provides that those records need only be provided pursuant to a specific request. Thus, the proposed rule revision will result in reductions in administrative costs borne by cable operators in connection with reproducing and maintaining certain records in their public files.

¹² 47 C.F.R. § 1.412(b)(5).

¹³ 47 U.S.C. §§ 154 (i)-(j), 303(r).

¹⁴ 5 U.S.C. § 603(b)(3).

¹⁵ 5 U.S.C. § 601(3).

¹⁶ 5 U.S.C. § 632.

¹⁷ 47 C.F.R. § 76.901(e).

¹⁸ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 26, 1996 (based upon figures for December 30, 1995).

E. Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. We considered and are proposing the establishment of reduced regulatory burdens on small entities with regard to certain recordkeeping requirements. In the *Reconsideration and Further NPRM*, we seek comment on the proposed rule revision which will ease the recordkeeping requirements for certain small cable operators. We are aware of no alternatives to further reduce burdens on small entities consistent with the important regulatory objectives served by the reporting requirements. All alternatives presented in comments to the *Reconsideration and Further NPRM* will be considered.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.

13. None.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Statement

14. The requirements proposed in this *Reconsideration and Further NPRM* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and have been found to impose modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collection requirements contained in this *Reconsideration and Further NPRM*, as required by the 1995 Act. Public and agency comments are due at the same time as other comments on this *Reconsideration and Further NPRM*; OMB comments are due 60 days from the date of publication of the *Reconsideration and Further NPRM* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

15. Written comments by the public on the proposed modified information collection requirements are due at the same time as other comments on this *Reconsideration and Further NPRM*. Written comments must be submitted by OMB on the proposed modified information collection requirements on or before 60 days from date of publication of the *Reconsideration and Further NPRM* in the Federal Register. Comments on the information collections contained herein should be submitted to Judy Foley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov. For additional information on the information collection requirements, contact Judy Boley at 202-418-0214 or via the Internet at the above address.

B. Ex Parte Rules

16. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules.¹⁹ Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

C. Filing of Comments and Reply Comments

17. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§1.415 and 1.419, interested parties may file comments **[21 days after Federal Register publication]** and reply comments **[31 days after Federal Register publication]**. We believe the comment periods are reasonable given the fact that the proposed rule was published with the *Order* that was released last year and the issue on which comment is sought is narrow and non-technical. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.²⁰ Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form<your e-mail address>." A sample form and directions will be sent in reply.

18. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The Cable Services Bureau contact for this proceeding is Carolyn Fleming at (202) 418-7200, TTY (202) 418-7172, or at cfleming@fcc.gov.

19. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Carolyn Fleming, Cable Services Bureau, 445 12th Street S.W., Room 4-A802, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case, CS Docket No. 98-132), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each

¹⁹ 47 C.F.R. 1.1206(b), as revised.

²⁰ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i)-(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j) and 303 (r), and Section 76.1700(a), as adopted by the Commission in the *1998 Biennial Regulatory Review -- Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Report and Order*, **IS VACATED**.

21. **IT IS FURTHER ORDERED** that **NOTICE IS HEREBY GIVEN** of the proposed amendment to Section 76.305(a) of the Commission's rules, 47 C.F.R. § 76.305(a), and **COMMENT IS SOUGHT** regarding the proposed amendment.

22. **IT IS FURTHER ORDERED** that the Commission's Consumer Information Bureau, Reference Information Center, **SHALL SEND** a copy of this *Reconsideration and Further NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary